IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO.842/2006
(Bhanwar Lal & Ors. Vs. Jetharam & Anr.)

Date of order : October 4th, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. A.K. Khatri, for the petitioners.
Mr. M.K. Garg, for non-petitioners.
Mr. Vishnu Kachchwaha, Public Prosecutor.

By way of filing the present revision petition, the petitioners have challenged the order impugned dated 19.8.2006 passed by Judicial Magistrate (First Class), Sheoganj in F.R. No.27 dated 28.11.2005 (FIR No.81 dated 16.9.2005 P.S. Barloot) Criminal Case No.43/06 whereby he accepted the final report filed by Police and rejected the protest petition filed by the petitioners.

According to the facts of the case inter alia stated in the petition, the complainant-petitioners filed a complaint in the Court of Judicial Magistrate, First Class, Sheoganj against the non-petitioners on 8.9.2005 for offences under Sections 147, 148, 149,

323, 452, 427 and 504 I.P.C. and alleged that on 6.9.2005 at about 11 p.m. when labourers were unloading tractor trolley by bringing out the bricks from it, which was to be used for construction work going on upon the place of occurrence, the non-petitioners whose houses are situated adjacent to the petitioners' houses, came out from their houses armed with weapons like lathis, kulharis and dhariyas and abused the petitioners and inflicted injuries. At that time to save themselves, the petitioners and other family members including mother entered in the STD booth shop and locked the door of the shop from inside but the non-petitioners entered in the shop by breaking the door by lathis and dhariyas and started beating the complainants and their mother by hand and by weapons which they were holding. Non-petitioners disconnected the phone connection of STD and completely broke the STD machine and threw away outside the shop and it resulted into the loss of around Rs.25,000/- to the complainants. Two tractor labourers Chogaram and Ramaram were eye-witnesses of the incident but nobody came their to rescue the complaint party and the non-petitioners ran away from the place of occurrence after beating the complainant party. The petitioner No.1 Bhanwar Lal received injuries and immediately after incident, they went to Police Station for lodging FIR but SHO, Barloot did not lodge their FIR and was supporting non-petitioners and he told the complainant party that there is a case

registered against them. He asked the complainants to send the ladies to their house else he threatened the complainants to involve them in the offence punishable under Section 307 I.P.C.

According to the facts, SHO lodged a false FIR No.79/06 on 7.9.2005 at about 6.30 a.m. against the complainants and arrested them in Police Station and produced them before the Magistrate on 8.9.2005, therefore, the complainants filed complaint and case was instituted upon complaint.

After registering the case, SHO, P.S., Barloot sent the complainants and their mother for medical examination. The petitioner No.1 was taken to the Government Hospital, Barloot and was medically examined. He got as many as five injuries on his body. A prayer was also made by the complainants before the Magistrate, Sheoganj that a case under Section 166 I.P.C. may be registered against SHO, Police Station Barloot, who deliberately disobeyed the order of learned Magistrate to cause injury to complainants because he was favouring the non-petitioners.

Upon FIR filed against the petitioners, a challan was filed against them for offence under Section 307 I.P.C. in which they were enlarged on bail by learned Sessions Judge, Sirohi vide order dated 19.9.2005. Upon complaint filed by the petitioners, a

case was also registered against non-petitioners bearing FIR No.81 dated 16.9.2005 at 5.35 p.m. After investigation, police gave negative final report No.27 dated 18.11.2005 that no offence is made out against the non-petitioners on the basis of investigation.

Upon filing the final report by the Police, notice was issued to the complainants and they moved a protest petition before learned Magistrate, Sheoganj on 5.1.2006 and after recording evidence of complainant Bhanwar Lal and two independent witnesses namely Chogaram and Ramaram and considering final report submitted by Police, the learned Magistrate found that sufficient grounds are existed to take cognizance against non-petitioners, therefore, he took cognizance against the non-petitioners for offence under Sections 147, 148, 452, 323, 427 I.P.C. vide order dated 3.2.2006.

Against the said order, the non-petitioners filed a criminal revision petition No.13/2006 before learned Sessions Judge, Sirohi. The said revision petition was allowed by learned Sessions Judge vide order dated 31.5.2006 and it was observed in the order that learned Magistrate did not consider the reasons given in the final report by the Police and took cognizance against the non-petitioners only on the basis of statement recorded under Sections 200 and 202 Cr.P.C. Therefore, vide order dated 31.5.2006, the

learned Sessions Judge remitted the case to learned Magistrate directing him to pass fresh order after considering the evidence collected during investigation and reasons given in the final report submitted by police as also the statements recorded under Sections 200 and 202 Cr.P.C..

The learned Magistrate, thereafter, proceeded to decide the matter afresh and vide order dated 19.8.2006 reproducing therein contents of final report in verbatim accepted the final report given by Police and observed that in the light of the principles laid down by this Hon'ble Court in Jaishiv Ram Vs. State of Rajasthan reported in 2003 (1) Cr.L.R. (Raj.) 793, there is no prima facie case appears to have been made out and it has been observed that the present case prima facie appears to have been filed by the petitioners in counter blast to FIR No.79/05 to save them and in that view of the matter the final report given by Police Station, Barloot in FIR No.81/05 was justified and the final report was accepted. Against the said order, the petitioners have preferred this revision petition.

It is argued by the learned counsel for the petitioners that the order impugned dated 19.8.2006 is erroneous, arbitrary and illegal. It is further submitted that their exists manifest illegality in the order impugned because in the statement recorded under

Sections 200 and 202 Cr.P.C., specific allegations were levelled by the petitioners and there was material on record for taking cognizance, therefore, though initially vide order dated 3.2.2006, cognizance was taken by learned Magistrate but later on when case was remitted to him by learned Sessions Judge in the revision petition filed by non-petitioners, then, he has passed impugned order and rejected the protest petition and accepted the final report. It is submitted that at the time of deciding the matter afresh vide impugned order, the learned Magistrate has committed an error because as per order of Sessions Court, the matter was to be examined in the light of reasons given in final report as well as in the statement recorded under Section 200 and 202 Cr.P.C. But from the perusal of order, it is revealed that the learned Magistrate has reproduced the reasons of final report and though he has considered the evidence on record but he has decided the matter as if he was deciding the matter finally after due trial. Therefore, the order suffers from illegality. Learned counsel for the petitioners vehemently argued that at the time of taking cognizance after recording statement under Section 200 and 202 Cr.P.C. it is the duty of the trial Court to consider the evidence recorded before the Court. It is also correct that at the time of deciding the matter of taking cognizance, the reasons of final report are also required to be considered but at the time of passing the order, it is

not necessary to adjudicate the matter after appreciating the evidence but it appears from the order impugned that after remitting the case by the learned Sessions Court vide order dated 31.5.2006, the learned Magistrate has accepted the reasons of final report in toto while ignoring the allegations, which are mentioned in the statement recorded under Sections 200 and 202 Cr.P.C. and he has decided the matter as if he was deciding the case finally after due trial. Therefore, the order impugned suffers from illegality. There is prima facie case against the non-petitioners for taking cognizance, therefore, the order impugned dated 19.8.2006 deserves to be set aside and cognizance is required to be taken against non-petitioners for committing offence as above. It is further submitted that for same incident, case was registered against the petitioners in which challan was filed and SHO has refused to register their case, therefore, complaint was filed by complainants under Section 156 (3) Cr.P.C. Thereafter, the FIR was registered by SHO but while supporting non-petitioner, he has given final report in the matter knowingly well that there were injuries upon the body of complainant party, therefore, the order impugned dated 19.8.2006 deserves to be quashed and cognizance may be taken against the petitioners.

Par contra, learned counsel for non-petitioners contended that the present complaint upon

which the case was registered and final report was given is out come of main incident in which FIR was filed by non-petitioners. It is further submitted that for the purpose of defence, this concocted story was framed and FIR was filed and in the investigation, which is fairly conducted by SHO, final report was given in the matter, therefore, the learned revisional Court has directed the trial Court to consider the reasons of final report and, thereafter, to pass afresh order. Learned Magistrate while following the directions issued by revisional Court has rightly considered the reasons of final report and evidence on record and appreciated the entirety of facts and evidence and rightly rejected the protest petition and rightly passed the order, accepting final report vide impugned order dated 19.8.2006, which does not require any interference by this Court.

I have considered the rival submissions made by both the learned counsel for the parties and perused the impugned order as well as the record of the case.

Upon perusal of the impugned order, it is clear that as per language and discussions of the order impugned, it is obvious that the learned Magistrate has decided the matter as if he was finally adjudicating the matter after trial, which is not permissible under the law. At the time of taking

cognizance, if sufficient evidence is on record for taking cognizance, then, only that evidence is required to be taken into account. It is true that as per the judgment of this Court, the reasons for giving final report are also required to be considered but only for the purpose of taking cognizance and not for adjudicating the matter. However, upon perusal of impugned order, it is clear that learned trial Court has proceeded to adjudicate the matter finally and gave clear cut finding as if the Magistrate was deciding the case finally, which is not permissible under the law. At the time of deciding the matter of taking cognizance after recording of statement under Section 200 and 202 Cr.P.C. the only requirement is to consider the reasons of final report, so also to consider the statement recorded under Section 200 and 202 Cr.p.C. but it is not permissible under the law to appreciate and discuss and to form opinion as if the matter is being decided finally. Therefore, in my opinion, the order impugned dated 19.8.2006 cannot be termed as an order of deciding matter of taking cognizance but it is an order of final adjudication of the matter. Therefore, at that stage, it was not permissible under the law to adjudicate the matter without trial. The only requirement is to consider the reasons of final report and evidence recorded before the Court under Sections 200 and 202 Cr.P.C.

In these circumstances, the order impugned

dated 19.8.2006 is set aside and the case is again remitted to Magistrate with a direction to consider the statement of complainants recorded under Sections 200 and 202 Cr.P.C. independently and so also after considering the reasons of final report, fresh order may be passed in accordance with the law. However, it is made clear that the trial Court should not pass order in the manner of final adjudication of the case after due trial but in the manner as the Court is deciding the matter of taking cognizance.

Accordingly, the revision petition is allowed.

(GOPAL KRISHAN VYAS), J.

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